

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

**COMMENTS OF CENTURYLINK**

CenturyLink, on behalf of its operating subsidiaries, hereby files these reply comments pursuant to the *Notice* concerning revisions to the Rural Health Care universal service support (“RHC USF”) program.<sup>1</sup> CenturyLink supports the Commission’s efforts to modify the existing RHC program to promote using broadband to provide remote health services in geographic areas that currently do not enjoy adequate access to necessary health care or health care facilities. Promoting the availability of robust and reliable broadband can improve the country’s delivery of health care to remote and rural areas of the country as has been described in the National Broadband Plan.<sup>2</sup> Although CenturyLink supports much of the *Notice*’s proposals, certain aspects of the rules should be modified to better meet Commission goals.

CenturyLink has particular interest in broadband for America’s communities. CenturyLink serves cities, towns, and rural communities all across the nation. CenturyLink is especially noted for its commitment to rural areas. Its average line density is a low 23 access

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<sup>1</sup> *Rural Health Care Support Mechanism*, Notice of Proposed Rulemaking, 25 FCC Rcd 9371 (2010) (“*Notice*”).

<sup>2</sup> Federal Communications Commission, Connecting America: The National Broadband Plan, GN Docket No. 09-51, 209-17 (rel. Mar. 16, 2010) (“National Broadband Plan”).

lines per square mile, and it has entire study areas with average densities below 6 access lines per square mile. It serves about 7 million access lines and more than 2 million broadband customers spread among 33 states, ranging from Texas to Minnesota and from Florida to Washington State. CenturyLink has invested heavily in its network, and remains committed to broadband investment wherever it can be justified. Already, it has made wireline broadband available to about 90% of households within its service areas, and it continues to extend and upgrade its broadband network in the communities it serves.

*Ownership Interests in Broadband Facilities.* The Commission proposes to require an eligible health care provider to have an ownership interest, IRU, or capital lease interest in facilities that the RHC program funds.<sup>3</sup> Qwest argues that the Commission's rules should not unduly restrict the manner in which eligible health care providers obtain broadband services.<sup>4</sup> In particular it states that health care providers should be permitted to take services from other entities that own the network facilities. CenturyLink agrees.

First, health care providers should not be forced to assume the administrative and other burdens associated with owning broadband infrastructure if qualified facilities and services can be obtained from a reliable third party. Second, requiring ownership of facilities can undermine the health care provider's ability to rely on existing-network-provider expertise that would more rapidly enable a health care provider to install and maintain beneficial health services under the RHC program. Third, it may well be less costly for an eligible healthcare provider to rely on the facilities and services of a reliable third party because that third party provider is able to pass

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<sup>3</sup> Notice, ¶¶ 55-58.

<sup>4</sup> Comments of Qwest Communications International Inc., WC Docket No. 02-60, at 2-7 (filed Sept. 8, 2010) ("Qwest Comments").

along its economies of scale to its customers, just as it does when it provides other broadband services. Fourth, ownership requirements could unnecessarily lead to the funding of duplicative network facilities. Therefore, CenturyLink urges the Commission to adopt Qwest's proposal by to eliminate the ownership requirement.

In a similar vein, Verizon urges the Commission to exercise caution with respect to its ownership rules, particularly in allowing an eligible healthcare provider to share capacity with third parties of the provider's broadband facilities.<sup>5</sup> Such facility sharing can materially complicate the eligible health care providers' ability to obtain needed broadband services. In addition, the proposal runs the risk that the RHC fund would unintentionally provide support facilities that would be used to compete with other existing broadband facilities. Government has long recognized the problems associated with subsidizing competition.<sup>6</sup> CenturyLink therefore supports Verizon's comments regarding ownership of facilities.

*Minimum Broadband Speeds for Healthcare Facilities.* The Commission tentatively proposes to set the minimum broadband speed for the health infrastructure program at 10 Mbps.<sup>7</sup> Qwest expresses concern with this suggestion, both as to the vagueness of the proposal as well as to the necessity of 10 Mbps as a minimum download speed.<sup>8</sup> Qwest wisely points out that certain telehealth providers may not need 10 Mbps to deliver the needed services. The

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<sup>5</sup> Comments of Verizon & Verizon Wireless, WC Docket No. 02-60, at 5-6 (filed Sept. 8, 2010) ("Verizon Comments").

<sup>6</sup> See, e.g., *High Cost Universal Service Support*, Order, 23 FCC Rcd 8834, ¶ 6 (2008) ("*CETC Freeze Order*"); Statement of Commissioner Larry S. Landis, *High-Cost Universal Service Support*, WC Docket No. 05-337, 22 FCC Rcd 20477, 20506 (Fed.-St. Jt. Bd. USF, 2007) (the "pathology" of the existing system, which promotes "subsidized competition", must end).

<sup>7</sup> Notice, ¶ 20.

<sup>8</sup> Qwest Comments at 7-8.

Commission's program should be flexible enough to allow an eligible health care provider to request funding for lower speeds as long as it can demonstrate that it will obtain needed services in furtherance of the RHC program using lower speeds. Given the Commission's stated interest in meeting healthcare provider's stated needs, a 10 Mbps minimum requirement seems excessive.<sup>9</sup>

*Inclusion of Dark Fiber as an Eligible Service.* The Commission proposes, among other things, that rural health care providers be permitted to request funding for facilities that include dark fiber, specifically a lease of dark fiber that may already be owned by state, regional or local governmental entities.<sup>10</sup> Qwest and Verizon both object to this proposal.<sup>11</sup> CenturyLink has previously expressed to the Commission the serious downsides of allowing dark fiber to be provided by non-telecommunications providers in the Commission's E-rate docket.<sup>12</sup>

First, allowing funding for direct leases of dark fiber by the applicant raises serious questions concerning whether this is the most cost-efficient solution available to meet the health care provider's broadband needs: the lease of dark fiber is extremely expensive and there are often less expensive lit fiber alternatives available. Second, non-telecommunications providers have a poor track record making dark fiber facilities viable for their services. Third, the

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<sup>9</sup> Under Section 54.609 of the Commission's rules for the RHC telecommunications program, CenturyLink is also concerned about the complexity of the procedures utilized for customers to identify the amount of program reimbursement associated with the difference between rural and urban rates. Because CenturyLink does not have urban services areas in a number of states, it is unable to help the healthcare provider identify an appropriate urban rate in order to comply with Commission procedures. CenturyLink believes that the Commission should simplify the procedures to better enable healthcare providers to identify appropriate urban rates for purposes of seeking reimbursement under the RHC program.

<sup>10</sup> Notice, ¶ 101.

<sup>11</sup> Qwest Comments at 8-9; Verizon Comments at 7.

<sup>12</sup> Reply Comments of CenturyLink, CC Docket No. 02-6, at 8-14 (filed July 26, 2010).

proposal potentially conflicts with the competitive bidding requirement of the RHC program because the FCC does not specify how such dark fiber facility might be identified and acquired by the eligible healthcare provider. CenturyLink asks the Commission to adopt the Qwest and Verizon modifications regarding dark fiber to the *Notice*'s proposals.

*Competitive and Technological Neutrality for Healthcare Facilities.* AT&T and Verizon raise concerns concerning the Commission's apparent endorsement of service provided by two specific broadband backbone providers, Internet2 and NationalLambdaRail.<sup>13</sup> AT&T additionally posits that the Commission concludes in the *Notice* that it will fund health care infrastructure programs that include connections only to these two backbone providers and not others.<sup>14</sup> The Commission has rightfully stated that the RHC funding mechanism should provide support for any technology or service that otherwise meets program requirements.<sup>15</sup>

There is no justification for establishing a preference for particular backbone providers and against another, and the Commission certainly should not require connections to be made to a particular backbone provider. Indeed, the National Broadband Report repudiates mandatory interconnection requirements.<sup>16</sup> Rather, the Commission should be guided by its other stated principles that a particular rural health care proposal must be cost-efficient, reliable, and sustainable. Such principles could well permit a funding applicant to rely on interconnection to

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<sup>13</sup> Comments of AT&T Inc., WC Docket No. 02-60, at 1-10 (filed Sept. 8, 2010) ("AT&T Comments"); Verizon Comments at 6-7.

<sup>14</sup> AT&T Comments at 2.

<sup>15</sup> *Notice*, ¶ 50. Competitive and technological neutrality has been a cornerstone of USF policies for over a decade. *Federal-State Joint Board on Universal Service*, First Report & Order, 12 FCC Rcd 8776, ¶¶ 46-51 (1997) ("*USF First Report & Order*").

<sup>16</sup> National Broadband Plan at 216 ([T]he FCC should continue to allow (but not require) the connection of networks to proprietary nationwide backbones that link government research institutions and academic, public and private health care providers that house significant medical expertise.”).

any backbone facilities that could complete the applicant's healthcare needs. In addition, permitting funding for only particular backbone providers may well be inconsistent with the Communications Act's requirements.<sup>17</sup> Certainly, such a rule would lead to unnecessary discrimination among providers and thus should not be countenanced. Therefore, CenturyLink urges the Commission to eliminate any preference for particular backbone providers in RHC program requirements.<sup>18</sup>

*Processing Invoices.* Apparently, for the permanent infrastructure program, the *Notice* does not propose to change the current, cumbersome invoicing system that has been used during the pilot phase. In the pilot program, once the vendor provides facilities, the vendor bills the customer, the customer pays 15 percent of the costs, and the healthcare provider creates and submits the appropriate FCC form to the vendor. The vendor, in turn, reviews, certifies, and then submits the form to the Universal Service Administrative Company ("USAC") for processing. This tedious and unnatural procedure has led to significant delays, sometimes for up to ten months, before the vendor receives payment. These delays are most often caused when healthcare providers have long delays in producing and finalizing FCC forms after service is rendered. This lengthy delay between service provision and payment undermines the willingness of vendors to meet healthcare broadband needs, and therefore is inconsistent with program goals. Two solutions are available to rectify this problem. First, the Commission could follow the current E-rate procedures of the Billed Entity Applicant Reimbursement ("BEAR") process

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<sup>17</sup> See AT&T Comments at 3-4.

<sup>18</sup> CenturyLink also supports the elimination of the "offset" rule because it would be more efficient for program payments to be made directly to eligible health care providers. *Notice*, ¶¶ 135-37.

whereby payments and submission of FCC forms are not subject to inordinate delays.<sup>19</sup> Second, the rules applicable to the telecommunications portion of the RHC program should be followed.<sup>20</sup> The Commission should modify the payment and invoicing system of the healthcare infrastructure program to ensure that vendors are more promptly paid, as occurs for other USF programs.

*Mandatory Contract Terms and Conditions.* The Commission proposes as a condition for obtaining RHC funding to adopt a series of minimum terms and conditions applicable to all construction contracts.<sup>21</sup> These proposals contain detailed provisions regarding work standards, withholding of payments, indemnification clauses, performance bond, and compliance with environmental regulations, for example. Other than saying that “consistency” among projects is important and that these terms will “help” healthcare providers adopt contracts with a “basic level of assurance,” the FCC has not attempted to justify why it would for the first time impose such provisions in a USF program. The Commission has not even suggested that healthcare providers are incapable of negotiating these terms on their own. The FCC has never imposed such terms and conditions in the corollary E-rate program. These type of terms and conditions are contained in all construction contracts and are routinely negotiated by the parties at arms length in accordance with state law requirements. The FCC should not further complicate administration of the RHC program process by adopting detailed contractual requirements that are unrelated to attaining program objectives.

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<sup>19</sup> The BEAR process is described at <http://www.usac.org/sl/applicants/step11/>.

<sup>20</sup> The RHC funding process is described under the Health Care Provider tab, steps 7 through 9, located at <http://www.usac.org/rhc/>.

<sup>21</sup> Notice, ¶¶ 60-64.

CenturyLink applauds the Commission's efforts to promote healthcare advancements in rural America. CenturyLink believes with the few minor changes it suggests here, it could better target the RHC program to fulfill the FCC National Broadband Plan goals.

Respectfully submitted,

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